



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEĆA KOSOVA

**In:** KSC-BC-2020-06

**The Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi,  
and Jakup Krasniqi**

**Before:** Pre-Trial Judge

Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

**Date:** 10 December 2021

**Language:** English

**Classification:** Public

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**Public Redacted Version of**

**Second Decision on Victims' Participation**

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**THE PRE-TRIAL JUDGE**,<sup>1</sup> pursuant to Articles 22 and 39(11) and (13) of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rules 80, 95(2)(h) and (i), 113 and 114 of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules"), hereby renders this decision.

## I. PROCEDURAL BACKGROUND

1. On 26 October 2020, the Pre-Trial Judge confirmed the indictment against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi ("Confirmed Indictment").<sup>2</sup>

2. On 5 January 2021 and 6 July 2021, the Pre-Trial Judge issued two framework decisions establishing the principles governing the admission of victims to participate in the proceedings in the present case.<sup>3</sup>

3. On 21 April 2021, the Pre-Trial Judge issued the "First Decision on Victims' Participation", admitting nine victims to participate in the proceedings, rejecting seven and deferring determination in relation to one, Victim 12/06.<sup>4</sup> In addition, the Pre-Trial Judge declined to assess the application of one victim, Victim 05/06,

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<sup>1</sup> KSC-BC-2020-06, F00001, President, *Decision Assigning a Pre-Trial Judge*, 23 April 2020, public.

<sup>2</sup> KSC-BC-2020-06, F00026, Pre-Trial Judge, *Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, 26 October 2020, strictly confidential and *ex parte*. A confidential redacted version was issued on 19 November 2020, F00026/CONF/RED, and a public redacted version on 30 November 2020, F00026/RED. The indictment as confirmed was filed on 30 October 2020; see KSC-BC-2020-06, F00034, Specialist Prosecutor, *Submission of Confirmed Indictment and Related Requests*, 30 October 2020, confidential, with Annex 1, strictly confidential and *ex parte*, and Annexes 2-3, confidential. A further corrected confirmed indictment, correcting certain clerical errors, was filed on 4 November 2020, F00045/A01 (strictly confidential and *ex parte*), F00045/A02 (confidential redacted) and F00045/A03 (public redacted). A lesser confidential redacted version was filed on 11 December 2020, F00134.

<sup>3</sup> KSC-BC-2020-06, F00159, Pre-Trial Judge, *Framework Decision on Victims' Applications* ("First Framework Decision"), 4 January 2021, public; F00382, Pre-Trial Judge, *Second Framework Decision on Victims' Applications*, 6 July 2021, public.

<sup>4</sup> KSC-BC-2020-06, F00257, Pre-Trial Judge, *First Decision on Victims' Participation* ("First Decision on Victims' Participation"), 21 April 2021, confidential, para. 85(a), (e), (f). A public redacted version was issued the same day, F00257/RED.

who according to the Victims' Participation Office ("VPO") passed away after the submission of his application.<sup>5</sup>

4. On 21 May 2021 and 11 June 2021, the VPO provided additional information in relation to Victims 12/06 and 05/06 respectively.<sup>6</sup> It also transmitted one application made by Victim 26/06, a family member of Victim 05/06, who wishes to: (i) continue with the application of Victim 05/06 as a successor and (ii) participate in his own name as an indirect victim ("Second Supplement to the First Registry Report").<sup>7</sup> No observations were made by the Parties in response to the VPO's submissions regarding Victims 05/06 and 26/06.

5. On 18 June 2021, the VPO filed a second report on victims' applications, transmitting 11 new applications ("Second Registry Report").<sup>8</sup> No observations were made by the Parties in response.

6. On 16 July 2021, following an appeal launched by six of the seven applicants whose applications were rejected in the First Decision on Victims' Participation ("Denied Applicants"),<sup>9</sup> the Court of Appeals Panel instructed the Pre-Trial Judge to revert to it with an individual assessment of the applications and the reasons underpinning his decision to reject them.<sup>10</sup>

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<sup>5</sup> First Decision on Victims' Participation, paras 14, 35.

<sup>6</sup> KSC-BC-2020-06, F00318, VPO, *Registry Submission Pursuant to First Decision on Victims' Participation* ("Additional Information Victim 12/06"), 21 May 2021, confidential; F00347, VPO, *Second Supplement to First Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings* ("Second Supplement to the First Registry Report"), 11 June 2021, public, with Annex 1, strictly confidential and *ex parte*.

<sup>7</sup> Second Supplement to the First Registry Report, para. 12.

<sup>8</sup> KSC-BC-2020-06, F00360, VPO, *Second Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings* ("Second Registry Report"), 18 June 2021, public, with Annexes 1-12, strictly confidential and *ex parte*.

<sup>9</sup> Victims 08/06, 09/06, 10/06, 11/06, 13/06 and 14/06. Victim 06/06 accepted the Pre-Trial Judge's decision and did not appeal it; see KSC-BC-2020-06, IA005/F00004/RED, *Public Redacted Version of the Appeal against the "First Decision on Victims' Participation" pursuant to Rule 113(6) of the Rules*, 7 June 2021, public, para. 1.

<sup>10</sup> KSC-BC-2020-06, IA005/F00008, Court of Appeals Panel, *Decision on Appeal Against "First Decision on Victims' Participation"* ("Decision on Appeal against First Decision on Victims' Participation"), 16 July 2021, public, paras 40-41.

7. On 20 August 2021, Counsel for Denied Applicants submitted observations on the harm suffered by the Denied Applicants and advanced that the Pre-Trial Judge should reconsider his decision rejecting their applications.<sup>11</sup>

8. On 3 September 2021, the Specialist Prosecutor's Office ("SPO") submitted a corrected Confirmed Indictment ("Corrected Confirmed Indictment").<sup>12</sup>

9. On 19 November 2021, the VPO informed the Pre-Trial Judge that one of the victim applicants, Victim 35/06, wished to withdraw his application.<sup>13</sup>

## II. APPLICABLE LAW

### A. APPLICATION AND ADMISSION TO THE PROCEEDINGS

10. Pursuant to Article 22(1) of the Law and Rule 2 of the Rules, a victim is a natural person who has personally suffered harm, including physical, mental or material harm, as a direct result of a crime within the jurisdiction of the Specialist Chambers and alleged in an indictment confirmed by the Pre-Trial Judge.

11. Pursuant to Rule 113(1) of the Rules, after the confirmation of an indictment and sufficiently in advance of the opening of the case, a person claiming to be a victim of a crime alleged in the indictment may file an application for admission as a victim participating in the proceedings, specifying how he or she qualifies as a victim and providing the location and date of an alleged crime giving rise to harm. Application forms shall not be disclosed to the Parties.

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<sup>11</sup> KSC-BC-2020-06, F00436, Counsel for Denied Applicants, *Observations on Individual Applications of Denied Victims* ("Observations of Counsel for Denied Applicants"), 20 August 2021, strictly confidential and *ex parte*, p. 6.

<sup>12</sup> KSC-BC-2020-06, F00455/A01, Specialist Prosecutor, *Annex 1 to Submission of Corrected Indictment and Request to Amend pursuant to Rule 90(1)(b)*, 3 September 2021, strictly confidential and *ex parte*. Confidential and public redacted versions were filed on 8 September 2021, F00455/CONF/RED/A01 and F00455/RED/A01, respectively.

<sup>13</sup> KSC-BC-2020-06, F00573, VPO, *Withdrawal of Application for Participation in the Proceedings from Applicant Victim-35/06*, 19 November 2021, public.

12. Pursuant to Rule 113(2) of the Rules, the VPO registers and assesses the applications and files them before the Pre-Trial Judge together with a recommendation on admissibility and common representation, and a request for protective measures under Rule 80 of the Rules, as applicable. The VPO must also submit a confidential report to the Parties, without providing any identifying information of the applicants.

13. Pursuant to Rule 113(3) of the Rules, the Parties may only make submissions on legal grounds regarding admissibility and common representation.

14. Pursuant to Rules 95(2)(i) and 113(4)-(5) of the Rules, the Pre-Trial Judge shall consider whether the applicant has provided *prima facie* evidence of the harm suffered as a direct result of a crime in the indictment and shall render a reasoned decision granting or denying admission in the proceedings. The Pre-Trial Judge shall also decide on common representation and any requests for protective measures. The decision shall be notified to the applicant, the VPO and the Parties.

15. Pursuant to Rule 113(6) of the Rules, denied applicants may appeal as of right the decision within fourteen (14) days of notification.

16. Pursuant to Rule 113(8) of the Rules, the Pre-Trial Judge, after having consulted the VPO, shall decide whether to divide the victims participating in the proceedings into groups having common representation, taking into consideration: (a) any conflicting interests that may hinder common representation; (b) any similar interests that may facilitate common representation; and (c) the rights of the accused and the interests of a fair and expeditious trial.

## B. PARTICIPATION IN PRE-TRIAL PROCEEDINGS

17. Pursuant to Article 22(3) of the Law, a victim's personal interests and rights in criminal proceedings before the Specialist Chambers are notification, acknowledgement and reparation.

18. Pursuant to Rule 113(7) of the Rules, where victims are granted the right to participate in the proceedings, the Registrar shall assign a Victims' Counsel to a group of victims participating in the proceedings in accordance with the Directive on Counsel.

19. In accordance with Article 22(6) of the Law and Rule 114(1) of the Rules, victims participating in the proceedings shall exercise their rights through an assigned Victims' Counsel during, *inter alia*, pre-trial proceedings, when their interests are impacted and only when it is not prejudicial to or inconsistent with the rights of the accused.

20. Pursuant to Rule 114(4) of the Rules, where necessary and depending on the circumstances, the Pre-Trial Judge shall issue specific guidelines regulating the participation of victims in the pre-trial proceedings, in accordance with Article 22(3) and (6) of the Law.

21. Pursuant to Rule 114(2) of the Rules, Victims' Counsel may be present at pre-trial proceedings if deemed necessary by the Pre-Trial Judge, in order to ensure the personal interests and rights of the victims participating in the proceedings, in accordance with Article 22(3) of the Law.

22. Pursuant to Rule 114(3) of the Rules, Victims' Counsel shall have access to confidential material, unless otherwise provided in the Rules or as determined by the Pre-Trial Judge. Victims' Counsel shall keep his or her clients informed of relevant developments in the case in a manner which does not reveal confidential information.

23. Pursuant to Rule 114(4) of the Rules, whenever the personal interests of victims participating in the proceedings are affected, and unless otherwise provided in the Rules, Victims' Counsel may, under the control of the Panel, make oral and written submissions.

### C. PROTECTIVE MEASURES

24. Pursuant to Article 39(11) of the Law and Rule 95(2)(h) of the Rules, the Pre-Trial Judge may, where necessary, decide on motions related to the protection and privacy of victims and witnesses, filed before the transmission of the case file to the Trial Panel.

25. Pursuant to Rule 80(1) of the Rules, the Pre-Trial Judge may order, *proprio motu* or upon request, appropriate measures for the protection, safety, physical and psychological well-being, dignity and privacy of, *inter alia*, victims participating in the proceedings.

26. Pursuant to Rule 80(4) of the Rules, such measures may include non-disclosure to the Parties of any material or information that may lead to the disclosure of the identity of a victim participating in the proceedings.

### III. DISCUSSION

27. In the present decision, the Pre-Trial Judge will:

(a) decide on the applications of Victims 12/06 and 05/06 deferred in the First Decision on Victims' Participation;

(b) rule on the applications transmitted with the Second Supplement to the First Registry Report and the Second Registry Report; and

(c) provide further reasons for his decision to reject the applications of the Denied Applicants.

28. The Pre-Trial Judge is guided by the principles set out in the first “Framework Decision on Victims’ Applications” (“First Framework Decision”) and the First Decision on Victims’ Participation regarding: the requirements for an application to be considered complete,<sup>14</sup> the admissibility criteria,<sup>15</sup> the standard of proof,<sup>16</sup> the legal test applicable in granting protective measures<sup>17</sup> and the criteria for grouping victims for the purpose of common legal representation.<sup>18</sup>

A. APPLICATIONS DEFERRED IN THE FIRST DECISION ON VICTIMS’ PARTICIPATION

**1. Victim 12/06**

29. The Pre-Trial Judge recalls that, in the First Decision on Victims’ Participation, he found that the crime alleged by Victim 12/06 clearly did not fall under the scope of [REDACTED], as specified in the Confirmed Indictment, but that it was unclear whether it fell under the scope of the [REDACTED] charges at the same location.<sup>19</sup> In this regard, the Pre-Trial Judge recalls that the scope of the charges of [REDACTED] is limited to [REDACTED].<sup>20</sup> Victim 12/06’s family member is not [REDACTED].<sup>21</sup> As to the [REDACTED] charges, the Pre-Trial Judge notes that, according to Victim 12/06, his family member was never [REDACTED] by the Kosovo Liberation Army (“KLA”).<sup>22</sup> Accordingly, the crime

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<sup>14</sup> First Framework Decision, para. 22; First Decision on Victims’ Participation, para. 34.

<sup>15</sup> First Framework Decision, paras 28, 30-39; First Decision on Victims’ Participation, paras 42, 45, 50-55.

<sup>16</sup> First Framework Decision, para. 29; First Decision on Victims’ Participation, para. 43.

<sup>17</sup> First Framework Decision, paras 45-49; First Decision on Victims’ Participation, paras 64, 67.

<sup>18</sup> First Framework Decision, paras 42-44; *see also* paras 27, 40-41, 44, 49, on the role of the VPO who conducts the preliminary assessment regarding the admissibility of applications, the grouping of applicants and the requested protective measures; First Decision on Victims’ Participation, para. 76.

<sup>19</sup> First Decision on Victims’ Participation, para. 47.

<sup>20</sup> KSC-BC-2020-06, F00413, Pre-Trial Judge, *Decision on Defence Motions Alleging Defects in the Form of the Indictment* (“Decision on Defects in the Form of the Indictment”), 22 July 2021, confidential [REDACTED]. A public redacted version was issued the same day, F00413/RED; Decision on Appeal against First Decision on Victims’ Participation, para. 24.

<sup>21</sup> *See* First Decision on Victims’ Participation, para. 47 and footnote 54; [REDACTED].

<sup>22</sup> Additional Information Victim 12/06, para. 5; Victim 12/06, SD8-Note to File – Additional Information.

alleged by Victim 12/06 does not fall under the scope of the [REDACTED] charges either.

30. In light of the above, the Pre-Trial Judge finds that the crime that Victim 12/06 claims to have been a victim of does not fall under the material scope of the charges as specified in the Corrected Confirmed Indictment. Therefore, Victim 12/06 falls outside the scope of Rules 2 and 113(1) of the Rules. This is without prejudice to any future ruling on the admissibility of his application, including on the harm he may have suffered as a result of the described crime, following a possible amendment of the Corrected Confirmed Indictment.

## 2. Victim 05/06

31. The Pre-Trial Judge notes that, following the submission of his application, Victim 05/06 passed away. Victim 26/06, who is an immediate family member, wishes to continue with Victim 05/06's application as a successor.<sup>23</sup> The Pre-Trial Judge is therefore called upon to determine whether the action initiated by a victim who dies before the completion of the proceedings may be resumed by another person on behalf of the deceased victim.

### (a) Resumption of action on behalf of a deceased victim

32. The Pre-Trial Judge notes that this question is not expressly regulated by the Law or the Rules. However, Article 22(3) of the Law provides that, in proceedings before the Specialist Chambers, victims have the right to notification, acknowledgement and reparation. The right to acknowledgement is understood as the right to have the harm suffered recognised.<sup>24</sup> The Pre-Trial Judge considers that it is imperative to safeguard this right<sup>25</sup> and, therefore, to allow relatives of deceased victims or individuals closely connected to them to continue with the

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<sup>23</sup> Second Supplement to the First Registry Report, para. 12.

<sup>24</sup> See KSC-BC-2020-05, F00152, Trial Panel I, *Decision on Victims' Procedural Rights During Trial*, 12 July 2021, public, para. 16.

<sup>25</sup> See Article 3(2) of the Law and Article 54 of the Constitution of the Republic of Kosovo.

application initiated by the victim. To resume the action initiated by the victim, the relatives or closely-connected individuals must provide evidence of (i) the death of the victim and (ii) their relationship to the victim. As they are continuing the action initiated by the deceased victim, they may do so only within the limits of the submissions made by the victim in their application.<sup>26</sup>

33. Having determined that the action initiated by Victim 05/06 may be resumed by a relative or closely-connected individual, the Pre-Trial Judge will assess in the following whether Victim 05/06's application meets the admissibility criteria and whether Victim 26/06 qualifies as a relative or closely-connected individual.

(b) Completeness of application

34. Having assessed Victim 05/06's application form and supporting documentation against the requirements set out in the First Framework Decision,<sup>27</sup> the Pre-Trial Judge is satisfied that the application is complete.<sup>28</sup>

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<sup>26</sup> See, similarly, ICC, *Prosecutor v. Gbagbo and Blé Goudé*, ICC-02/11-01/15-1052, Trial Chamber I, [Decision on the Resumption of Action Applications](#), 11 October 2017, paras 12-14; *Prosecutor v. Ongwen*, ICC-02/04-01/15-962, Trial Chamber IX, [Decision on LRV Request Concerning the Deaths of Participating Victims](#), 30 August 2017, para. 3; *Prosecutor v. Bemba Gombo*, ICC-01/05-01/08-3346, Trial Chamber III, [Decision on "Requête relative à la reprise des actions introduites devant la Cour par des victimes décédées"](#), 24 March 2016, para. 22; *Prosecutor v. Ntaganda*, ICC-01/04-02/06-805, Trial Chamber VI, [Fourth Decision on Victims' Participation in Trial Proceedings](#), 1 September 2015, para. 8; *Prosecutor v. Katanga and Ngudjolo Chui*, ICC-01/04-01/07-1737, Trial Chamber II, [Motifs de la deuxième décision relative aux demandes de participation de victimes à la procédure](#), 22 December 2009, paras 30-32. See also *Prosecutor v. Al Hassan*, ICC-01/12-01/18-37-tENG, Pre-Trial Chamber I, [Decision Establishing the Principles Applicable to Victims' Applications for Participation](#), 24 May 2018, para. 52; *Prosecutor v. Bemba Gombo*, ICC-01/05-01/08-320, Pre-Trial Chamber III, [Fourth Decision on Victims' Participation](#), 12 December 2008, paras 44, 47.

<sup>27</sup> See First Framework Decision, para. 22.

<sup>28</sup> See also KSC-BC-2020-06, F00203, VPO, *First Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings* ("First Registry Report"), 15 February 2021, public, with Annexes 1-19, confidential and *ex parte*, paras 13-14. The Pre-Trial Judge notes that, while documentation regarding the harm suffered has not been submitted, the detailed account provided by Victim 05/06 is sufficient to allow the relevant findings to be made.

(c) Admissibility of application

35. *Natural person.* The Pre-Trial Judge is satisfied that Victim 05/06 was a natural person.<sup>29</sup>

36. *Alleged crimes.* The Pre-Trial Judge finds that Victim 05/06 is the victim of crimes (imprisonment/illegal or arbitrary arrest and detention, other inhumane acts, cruel treatment, torture and persecution) charged in relation to one of the detention sites identified in the Corrected Confirmed Indictment, in [REDACTED], and the alleged crimes fall within the temporal scope of the charges related to this location.<sup>30</sup>

37. *Harm.* The Pre-Trial Judge is satisfied that Victim 05/06 suffered physical harm, such as serious bodily injury, wounds, mutilation and impairment, and mental harm, such as fear and distress, as a direct result of the charged crimes he was allegedly a victim of.<sup>31</sup> However, the information provided regarding the alleged destruction and confiscation of property is not sufficient for a *prima facie* finding that Victim 05/06 also suffered material harm as a direct result of the charged crimes, as claimed.<sup>32</sup> This finding is without prejudice to any future ruling following submission of additional material on this matter.

(d) Whether Victim 26/06 may resume the action initiated by Victim 05/06

38. The Pre-Trial Judge notes that Victim 05/06's death certificate has been provided<sup>33</sup> and Victim 26/06 is [REDACTED] of Victim 05/06.<sup>34</sup> Accordingly, the

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<sup>29</sup> See First Registry Report, para. 22; Victim 05/06, SD2, SD3.

<sup>30</sup> See First Registry Report, para. 38; Annex 6 to First Registry Report; Victim 05/06, Application Form\_ENG; SD1\_Statement on crimes\_ENG; Corrected Confirmed Indictment [REDACTED].

<sup>31</sup> See First Registry Report, para. 38; Victim 05/06, Application Form\_ENG; SD1\_Statement on crimes\_ENG, p. 9; SD5-Note to file.

<sup>32</sup> Victim 05/06, Application Form\_ENG.

<sup>33</sup> Victim 05/06, SD6. The Pre-Trial Judge notes that the VPO has not submitted an English translation of the death certificate. In the interest of efficiency, the Pre-Trial Judge has made the determination on the basis of the certificate in its original language. However, the Pre-Trial Judge directs the VPO, in the future, to provide English translations.

<sup>34</sup> Victim 26/06, Application form ENG translation; SD2.

Pre-Trial Judge find that Victim 26/06 may resume the action initiated by Victim 05/06.

(e) Conclusion

39. In light of the above, the Pre-Trial Judge: (i) is satisfied that there is *prima facie* evidence that Victim 05/06 has suffered harm as a direct result of a crime alleged in the Corrected Confirmed Indictment and finds his to be application admissible; and (ii) decides that Victim 26/06 may resume the action initiated by Victim 05/06 before the Specialist Chambers.

B. APPLICATIONS TRANSMITTED WITH THE SECOND SUPPLEMENT TO THE FIRST REGISTRY REPORT AND THE SECOND REGISTRY REPORT

40. At the outset, the Pre-Trial Judge takes note of Victim 35/06's wish to withdraw<sup>35</sup> and will not consider his application further.

41. In the following, the Pre-Trial Judge will assess the applications of Victims 20/06, 22/06, 26/06, 33/06, 34/06, 36/06, 37/06, 38/06, 39/06, 40/06 and 41/06. The Pre-Trial Judge notes that the VPO recommends that all applicants be admitted as victims participating in the proceedings.<sup>36</sup>

**1. Completeness of applications**

42. Having assessed the application forms and supporting documentation against the requirements set out in the First Framework Decision,<sup>37</sup> the Pre-Trial Judge is satisfied that all applications are complete.<sup>38</sup>

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<sup>35</sup> KSC-BC-2020-06, F00573, VPO, *Withdrawal of Application for Participation in the Proceedings from Applicant Victim-35/06*, 19 November 2021, public.

<sup>36</sup> Second Supplement to the First Registry Report, para. 22; Second Registry Report, para. 37.

<sup>37</sup> See First Framework Decision, para. 22.

<sup>38</sup> See also Second Supplement to the First Registry Report, para. 14; Second Registry Report, para. 17. The Pre-Trial Judge notes that, while documentation regarding the harm suffered has not been submitted by Victims 26/06, 33/06, 34/06, 36/06, 37/06, 38/06, 39/06 and 40/06, the detailed accounts provided by the applicants are sufficient to allow the relevant findings to be made.

## 2. Admissibility of applications

43. *Natural persons.* The Pre-Trial Judge is satisfied that all victim applicants are natural persons.<sup>39</sup>

44. *Alleged crimes.* The Pre-Trial Judge is satisfied that all applicants are victims of crimes charged in relation to locations identified in the Corrected Confirmed Indictment and which fall within the temporal scope of the charges related to these locations, as follows:

(a) **Victim 20/06** is an indirect victim of crimes allegedly committed at [REDACTED] (murder), against an immediate family member who is named as a victim in the Corrected Confirmed Indictment;<sup>40</sup>

(b) **Victim 22/06** is a victim of crimes allegedly committed at [REDACTED] (imprisonment/illegal or arbitrary arrest and detention and persecution) against an immediate family member.<sup>41</sup> Noting that Victim 22/06 also claims that the fate of her family member remains unknown to this day,<sup>42</sup> the Pre-Trial Judge recalls that the scope of the charge of enforced disappearance is limited to the specific incidents described in the Corrected Confirmed Indictment and the victims identified therein and in Schedule C.<sup>43</sup> The Pre-Trial Judge notes that Victim 22/06's family member is not among the named victims and, therefore, does not fall under the scope of

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<sup>39</sup> See Second Supplement to the First Registry Report, para. 14; Second Registry Report, para. 20; Victim 20/06, SD1, SD2; Victim 22/06, SD1; Victim 26/06, SD1, SD2; Victim 33/06, SD1, SD2; Victim 34/06, SD1, SD2; Victim 36/06, SD1; Victim 37/06, SD1; Victim 38/06, SD1; Victim 39/06, SD1; Victim 40/06, SD1, SD3; Victim 41/06, SD1, SD2.

<sup>40</sup> See Second Registry Report, para. 33; Annex 2 to Second Registry Report; Victim 20/06, Application form\_ENG; Corrected Confirmed Indictment [REDACTED].

<sup>41</sup> See Second Registry Report, para. 34; Annex 3 to Second Registry Report; Victim 20/06, Application form\_ENG; SD3\_Statement on crime\_ENG; Corrected Confirmed Indictment [REDACTED].

<sup>42</sup> Second Registry Report, para. 34; Victim 22/06, Application form\_ENG; SD3\_Statement on crime\_ENG.

<sup>43</sup> Corrected Confirmed Indictment, para. 171, referring *inter alia* to [REDACTED]; Decision on Appeal against First Decision on Victims' Participation, para. 24; Decision on Defects in the Form of the Indictment, para. 171.

the charge of enforced disappearance as set forth in the Corrected Confirmed Indictment;

- (c) **Victim 26/06** is an indirect victim of crimes allegedly committed against Victim 05/06.<sup>44</sup> The Pre-Trial Judge refers to his findings above in relation to Victim 05/06;<sup>45</sup>
- (d) **Victims 33/06, 34/06, 39/06, 40/06 and 41/06** are all members of the same family and are indirect victims of crimes allegedly committed against a relative (persecution, imprisonment/illegal arbitrary arrest and detention, other inhumane acts, cruel treatment, torture, murder and enforced disappearance) who is named in the Corrected Confirmed Indictment and the Rule 86(3)(b) Outline;<sup>46</sup> and
- (e) **Victims 36/06,<sup>47</sup> 37/06 and 38/06** are direct victims of crimes (imprisonment/illegal or arbitrary arrest and detention, other inhumane acts, cruel treatment, torture and persecution) and they are named as victims in the Rule 86(3)(b) Outline.<sup>48</sup>

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<sup>44</sup> See Second Supplement to the First Registry Report, paras 12, 15; Victim 26/06, Application form ENG translation.

<sup>45</sup> See para. 36 above.

<sup>46</sup> See Second Registry Report, para. 35; Annexes 4, 5, 10-12 to the Second Registry Report; Victim 33/06, Application form, SD5; Victim 34/06, Application form, SD6; Victim 39/06, Application form; Victim 40/06, Application form; Victim 41/06, Application Form, SD3; Corrected Confirmed Indictment; Schedules A, B, C; KSC-BC-2020-06, F00006/A02, Specialist Prosecutor, *Annex 2 to Request to present additional supporting materials* ("Rule 86(3)(b) Outline"), 2 July 2020, strictly confidential and *ex parte*. A confidential redacted version was submitted on 11 December 2020, KSC-BC-2020-06, F00136/A01, Specialist Prosecutor, *Annex 1 to Submission of Confidential Redacted Rule 86(3)(b) Outlines*, 11 December 2020, confidential.

<sup>47</sup> The Pre-Trial Judge notes that Victim 36/06 claims that he was allegedly arrested and detained sometime in 1999, without providing a more specific date or timeframe. However, the Pre-Trial Judge observes that [REDACTED] he himself is named as a victim in the Rule 86(3)(b) Outline (see Victim 36/06, Application form, SD2, p. 1). Accordingly, the Pre-Trial Judge is satisfied that the crimes he is allegedly a victim of fall within the temporal scope of the charges.

<sup>48</sup> See Second Registry Report, para. 36; Annexes 7, 8 and 9 to Second Registry Report; Victim 36/06, Application form, SD2; Victim 37/06, Application form, SD2; Victim 38/06, Application form, SD1; Corrected Confirmed Indictment; Rule 86(3)(b) Outline.

45. *Harm.* The Pre-Trial Judge is satisfied that all victims have suffered harm as a direct result of the alleged crimes described by them, as follows:

- (a) **Victims 36/06, 37/06 and 38/06** have suffered physical harm (such as cuts, bruises, injuries, and broken arms, fingers and teeth), mental harm (such as post-traumatic stress disorder, memory loss and trouble sleeping) and material harm (loss of income) as a direct result of their alleged detention and mistreatment;<sup>49</sup>
- (b) **Victims 20/06, 22/06, 26/06, 33/06, 34/06 and 40/06** have suffered mental harm (such as psychological trauma, depression, anxiety, bereavement, fear, trouble sleeping and stress),<sup>50</sup> by virtue of being immediate family members of the direct victims;<sup>51</sup> and
- (c) **Victims 39/06 and 41/06**, have suffered mental harm by virtue of being in a close relationship with the direct victim.<sup>52</sup> In this regard, the Pre-Trial Judge notes that Victims 39/06 and 41/06 are relatives of the direct victim [REDACTED]. [REDACTED].<sup>53</sup>

46. The above findings are without prejudice to any future ruling following submission of additional material.

### 3. Conclusion

47. In light of the above, the Pre-Trial Judge finds that there is *prima facie* evidence that Victims 20/06, 22/06, 26/06, 33/06, 34/06, 36/06, 37/06, 38/06, 39/06, 40/06 and 41/06 have suffered harm as a direct result of crimes alleged in the

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<sup>49</sup> See Second Registry Report, paras 25, 26, 32, 36; Victim 36/06, Application form; Victim 37/06, Application form; Victim 38/06, Application form.

<sup>50</sup> See Second Registry Report, paras 25, 27, 30, 31-35; Victim 20/06, Application form\_ENG; Victim 22/06, Application form\_ENG; Victim 26/06, Application form ENG translation; Victim 33/06, Application form; Victim 34/06, Application form; Victim 40/06, Application form.

<sup>51</sup> See First Decision on Victims' Participation, paras 50, 53.

<sup>52</sup> See First Decision on Victims' Participation, paras 50, 53; Second Registry Report, paras 25, 27, 30-32, 35.

<sup>53</sup> Annex 10 to Second Registry Report; Victim 39/06, SD3; Victim 41/06, Application form, SD3.

Corrected Confirmed Indictment and admits them as participating victims in the proceedings.

## C. PROTECTIVE MEASURES

### 1. Admitted applicants

48. The VPO recommends that Victims 20/06, 22/06, 26/06, 33/06, 34/06, 36/06, 37/06, 38/06, 39/06, 40/06 and 41/06 be granted non-disclosure of their identities to the public, the Accused and Defence Counsel<sup>54</sup> and Victim 05/06 be granted non-disclosure of his identity to the public.<sup>55</sup>

#### (a) Application forms

49. The Pre-Trial Judge notes that, in accordance with Rule 113(1) of the Rules, all application forms, application summaries and supporting documentation shall remain strictly confidential and *ex parte*.<sup>56</sup>

#### (b) Identity of applicants

50. At the outset, the Pre-Trial Judge recalls that, as indicated in the First Framework Decision, the legal test applicable for protective measures in relation victims is the same as that applicable in relation to witnesses.<sup>57</sup> That being said, when determining the appropriate protective measures for victims, the Pre-Trial Judge shall take into account that: (i) the purpose of victim participation is to allow victims to pursue their rights and personal interests as provided in the Law and the Rules; and (ii) this purpose informs the considerations regarding the protective measures to be ordered for victims, without prejudice to any additional

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<sup>54</sup> Second Supplement to the First Report, para. 51; Second Registry Report, para. 48.

<sup>55</sup> First Registry Report, para. 61.

<sup>56</sup> See also First Decision on Victims' Participation, para. 64.

<sup>57</sup> First Framework Decision, para. 47.

measures stemming from their potential dual status.<sup>58</sup> The below findings are without prejudice to any future ruling by the relevant Trial Panel in this regard.

51. In assessing the existence of an objectively justifiable risk and the necessity of the protective measures, the Pre-Trial Judge takes into account the following specific factors applicable to one or more of the victims: (i) all victims continue to suffer from physical and/or mental trauma as a result of the crimes they or their family members have allegedly been victims of; (ii) all victims have expressed concern that revealing their identity to the public, Defence Counsel and/or the Accused might endanger them or their family; and (iii) [REDACTED].<sup>59</sup> In addition, the Pre-Trial Judge pays regard to: (i) the general climate of witness and victim intimidation prevailing in Kosovo, particularly in criminal proceedings against former KLA members; and (ii) the Accused's means and incentives to intimidate victims, in light of the positions of authority held by them during the timeframe of the charges, as well as in more recent times.<sup>60</sup> Moreover, the Pre-Trial Judge is also mindful that: (i) by virtue of their status as victims participating in the proceedings, these individuals are especially vulnerable and protective measure have to address their special needs as victims; and (ii) adequate protective measures for victims are often the legal means by which their participation in the proceedings can be secured, as such measures are a necessary step in order to safeguard their safety, physical and psychological well-being, dignity and privacy in accordance with Rule 80 of the Rules.<sup>61</sup>

52. For these reasons, the Pre-Trial Judge considers that the disclosure to the public and the Parties of any material or information leading to the identification of the victims admitted to participate in the proceedings poses an objectively justifiable risk to them and their family members and therefore finds that

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<sup>58</sup> First Decision on Victims' Participation, para. 67.

<sup>59</sup> See the application forms of each of the victims.

<sup>60</sup> See First Decision on Victims' Participation, para. 68.

<sup>61</sup> See First Decision on Victims' Participation, para. 68.

anonymity under Rule 80(4)(e)(i) of the Rules is the most appropriate and necessary measure at this stage of the proceedings.

53. Regarding the proportionality of the measure, the Pre-Trial Judge notes that any protective measures ordered at this stage in relation to any of the admitted victims are without prejudice to the variation of such measures at a later stage, including by the Trial Panel, if and when the need arises.<sup>62</sup> For these reasons, the Pre-Trial Judge finds that anonymity under Rule 80(4)(e)(i) of the Rules is a proportionate measure at this stage of the proceedings.

54. In light of the above, the Pre-Trial Judge orders that the names and any identifying information of Victims 05/06, 20/06, 22/06, 26/06, 33/06, 34/06, 36/06, 37/06, 38/06, 39/06, 40/06 and 41/06 be withheld from the public and the Parties.

## 2. Rejected applicants

55. Regarding Victim 12/06, the Pre-Trial Judge recalls that the application process is confidential by virtue of Rule 113(1)-(2) of the Rules and considers that the non-disclosure of Victim 12/06's name and identifying information to the Parties and the public is necessary to protect his privacy. Given that he is not admitted as a victim participating in the proceedings, no prejudice is caused to the Accused or a fair trial by the non-disclosure of his identity.<sup>63</sup>

56. In light of the above, the Pre-Trial Judge orders that the name and any identifying information of Victim 12/06 be withheld from the Parties and the public. The strictly confidential and *ex parte* classification of Victim 12/06's application form, application summary and supporting documentation is therefore maintained.

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<sup>62</sup> See also First Decision on Victims' Participation, para. 69.

<sup>63</sup> See also First Decision on Victims' Participation, para. 71.

#### D. GROUPING AND COMMON LEGAL REPRESENTATION

57. The Pre-Trial Judge notes that three of the victims (Victims 05/06, 22/06 and 26/06) have indicated a preference for a particular counsel, three wish to have an international / non-Kosovan counsel (Victims 33/06, 37/06 and 40/06) and six have no preference (Victims 20/06, 34/06, 36/06, 38/06, 39/06 and 41/06).<sup>64</sup> The VPO recommends that all admitted victims be grouped in Group 1, together with the victims previously admitted, and that all be represented by Victims' Counsel assigned to Group 1.<sup>65</sup>

58. In light of the same considerations as set out in the First Decision on Victims' Participation,<sup>66</sup> the Pre-Trial Judge finds that Victims 20/06, 22/06, 26/06 (also on behalf of Victim 05/06), 33/06, 34/06, 36/06, 37/06, 38/06, 39/06, 40/06 and 41/06 shall be grouped under Group 1, together with the victims previously admitted, and shall be represented by Victims' Counsel assigned to Group 1.

59. That said, with a view to ensuring the efficiency of the proceedings while also respecting the legal framework of the Specialist Chambers regarding victims' participation, the Pre-Trial Judge encourages Victims' Counsel to involve other proposed or assigned counsel, if possible.

#### E. PARTICIPATION IN PRE-TRIAL PROCEEDINGS

60. Victims 20/06, 22/06, 26/06 (also on behalf of Victim 05/06), 33/06, 34/06, 36/06, 37/06, 38/06, 39/06, 40/06 and 41/06 shall exercise their rights through their

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<sup>64</sup> See Second Registry Report, para. 43; and the application forms of each of the victims.

<sup>65</sup> KSC-BC-2020-06, F00241, VPO, *Supplement to First Registry Report to the Pre-Trial Judge on Victims' Applications for Participation in the Proceedings with Recommendation on Grouping*, 1 April 2021, public, with Annex 1 confidential and *ex parte*, para. 29; Second Supplement to the First Registry Report, para. 50; Second Registry Report, paras 42-44.

<sup>66</sup> First Decision on Victims' Participation, para. 76; First Framework Decision, para. 43.

Victims' Counsel and shall participate through the modalities described in the First Decision on Victims' Participation.<sup>67</sup>

F. FURTHER REASONING FOR THE PRE-TRIAL JUDGE'S DECISION TO REJECT THE APPLICATIONS OF THE DENIED APPLICANTS

**1. Preliminary Remarks**

61. First, the Pre-Trial Judge recalls that, as confirmed by the Court of Appeals Panel, the crimes in relation to which an applicant claims to be a victim must fall under the material, geographical and temporal parameters of the charges, as specified in the Corrected Confirmed Indictment.<sup>68</sup> In making this assessment, the Pre-Trial Judge examines the VPO reports, the application forms, the supporting documentation and the relevant parts of the Corrected Confirmed Indictment, which are the reference points for the Pre Trial Judge's analysis and are to be read together with the Pre-Trial Judge's reasoning. While each application is assessed individually, this assessment may not necessarily translate into separate reasoning for each applicant, especially where the reasons are the same or similar, so as to ensure the expeditious and efficient conduct of the proceedings.

62. Second, the Pre-Trial Judge observes that Counsel for Denied Applicants has submitted observations on the harm suffered and has requested the Pre-Trial Judge to reconsider his decision.<sup>69</sup> In this regard, the Pre-Trial Judge notes that the Court of Appeals Panel has remanded the matter to the Pre-Trial Judge only in order for him to provide further reasons for rejecting the applications of the Denied Applicants.<sup>70</sup> The Pre-Trial Judge is not called upon to reconsider his

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<sup>67</sup> First Decision on Victims' Participation, paras 82-84, 85(d).

<sup>68</sup> Decision on Appeal against First Decision on Victims' Participation, para. 35; First Decision on Victims' Participation, para. 45.

<sup>69</sup> Observations of Counsel for Denied Applicants, para. 1 and p. 6.

<sup>70</sup> Decision on Appeal against First Decision on Victims' Participation, paras 40-41.

previous decision. Nor does he see any reason to do so. However, in order for the Denied Applicants to fully understand why their applications were rejected, the Pre-Trial Judge will address their observations when providing further reasons for his decision.

## 2. Further Reasoning

### (a) Victim 08/06

63. The Pre-Trial Judge recalls that Victim 08/06 claims that her immediate family member was kidnapped [REDACTED] and held by KLA members at detention sites in [REDACTED]. He remains missing to this day.<sup>71</sup> The Pre-Trial Judge notes that: (i) [REDACTED] does not appear in the Corrected Confirmed Indictment as a charged location; (ii) the direct victim's alleged imprisonment/detention in [REDACTED] falls outside the temporal scope of the charges related to these sites;<sup>72</sup> and (iii) the direct victim is not among the alleged victims of enforced disappearance named in the Corrected Confirmed Indictment or Schedule C. In this regard, the Pre-Trial Judge recalls that the scope of the charge of enforced disappearance is limited to the specific incidents described in the Corrected Confirmed Indictment and the victims identified therein and in Schedule C.<sup>73</sup>

64. Noting the submission made by Counsel for Denied Applicants that other inhumane acts and cruel treatment do not require a clear link to specific sites,<sup>74</sup> the Pre-Trial Judge highlights that the Corrected Confirmed Indictment pleads that "JCE Members and Tools established and maintained inhumane conditions *at detention sites identified in Schedule A*".<sup>75</sup> Thus, the charges of other inhumane acts

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<sup>71</sup> Victim 08/06, SD1\_Statement on Crime\_ENG.

<sup>72</sup> Corrected Confirmed Indictment [REDACTED].

<sup>73</sup> Decision on Appeal against First Decision on Victims' Participation, para. 24; Decision on Defects in the Form of the Indictment, para. 171.

<sup>74</sup> Observations of Counsel for Denied Applicants, paras 7-8.

<sup>75</sup> Corrected Confirmed Indictment, para. 94 (emphasis added).

and cruel treatment must be read together with the charges of imprisonment/arbitrary arrest and detention, which are alleged to have been committed at one of the identified detention sites or at a location identified in a similar manner in the Corrected Confirmed Indictment and Schedule A.<sup>76</sup>

(b) Victims 09/06, 10/06 and 11/06

65. The Pre-Trial Judge recalls that Victims 09/06, 10/06 and 11/06, who are members of the same family, claim that their immediate family member was arrested by KLA members on [REDACTED] and detained at [REDACTED]. His whereabouts remain unknown to this day.<sup>77</sup> The Pre-Trial Judge notes that the alleged arrest and detention of the direct victim falls outside the temporal scope of the charges as specified in the Corrected Confirmed Indictment in relation to the detention site where the direct victim was allegedly held.<sup>78</sup>

66. The Pre-Trial Judge notes the submissions made by Counsel for Denied Applicants that the applicants should be admitted on the basis of the harm suffered as a result of (i) the crime of enforced disappearance, considering its continuous nature, or alternatively (ii) the crimes of other inhumane acts and cruel treatment, which do not require a link to a specific detention site, or (iii) persecution, which covers the entire indictment period.<sup>79</sup> In this regard, the Pre-Trial Judge clarifies that: (i) the direct victim is not among the alleged victims of enforced disappearance named in the Corrected Confirmed Indictment;<sup>80</sup> (ii) the charges of other inhumane acts/cruel treatment are linked to the detention sites identified in the Corrected Confirmed Indictment;<sup>81</sup> and (iii) the charge of persecution must be read together with the charges of imprisonment/arbitrary

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<sup>76</sup> Decision on Defects in the Form of the Indictment, paras 150, 153.

<sup>77</sup> Victim 09/06, Application Form\_ENG; Victim 10/06, Application Form\_ENG; Victim 11/06, Application Form\_ENG.

<sup>78</sup> Corrected Confirmed Indictment [REDACTED].

<sup>79</sup> Observations of Counsel for Denied Applicants, paras 9-11.

<sup>80</sup> See Corrected Confirmed Indictment, Schedule C.

<sup>81</sup> See para. 64 above.

arrest and detention, other inhumane acts/cruel treatment, torture, murder and enforced disappearance.<sup>82</sup>

(c) Victim 13/06

67. The Pre-Trial Judge recalls that Victim 13/06 claims that his immediate family member was kidnapped by KLA members [REDACTED]. The family received only general information that he had been moved from detention site to detention site and his fate remains unknown.<sup>83</sup> The Pre-Trial Judge notes that: (i) the information provided is not sufficient for a *prima facie* finding that the direct victim was held at one of the detention sites identified in the Corrected Confirmed Indictment; and (ii) the direct victim is not among the alleged victims of enforced disappearance named in the Corrected Confirmed Indictment or Schedule C.<sup>84</sup>

(d) Victim 14/06

68. Noting that Victim 14/06 claims that his immediate family member was a victim of murder,<sup>85</sup> the Pre-Trial Judge recalls that the scope of the charge of murder is limited to the incidents expressly referred to in the Corrected Confirmed Indictment.<sup>86</sup> The alleged murder of Victim 14/06's family member does not appear, based on the information provided, to be among the charged incidents. Further and nothing the submissions made by Counsel for Denied Applicants,<sup>87</sup> the charge of persecution must be read together with the charge of murder, as mentioned above.<sup>88</sup>

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<sup>82</sup> Decision on Defects in the Form of the Indictment, paras 139, 144.

<sup>83</sup> Annex 14 to First Registry Report; Victim 13/06, Application Form\_ENG; SD3\_Chronology of kidnapping\_ENG; SD4.

<sup>84</sup> Decision on Appeal against First Decision on Victims' Participation, para. 24; Decision on Defects in the Form of the Indictment, para. 171.

<sup>85</sup> Victim 14/06, Application Form\_ENG.

<sup>86</sup> Decision on Defects in the Form of the Indictment, para. 160.

<sup>87</sup> Observations of Counsel for Denied Applicants, para. 13.

<sup>88</sup> See para. 66 above.

(e) Conclusion

69. For these reasons, the Pre-Trial Judge found that the crimes that Victims 08/06, 09/06, 10/06, 11/06, 13/06 and 14/06 claim to be victims of do not fall under the temporal, geographical and material scope of the charges, as specified in the Confirmed Indictment, and therefore fall outside the scope of Rules 2 and 113(1) of the Rules.<sup>89</sup>

IV. DISPOSITION

70. For the above-mentioned reasons, the Pre-Trial Judge hereby:

- a. **REJECTS** the application of Victim 12/06 as inadmissible;
- b. **GRANTS** the applications of Victims 05/06, 20/06, 22/06, 26/06, 33/06, 34/06, 36/06, 37/06, 38/06, 39/06, 40/06 and 41/06 and admits Victims 20/06, 22/06, 26/06, 33/06, 34/06, 36/06, 37/06, 38/06, 39/06, 40/06 and 41/06 to participate as victims in the proceedings;
- c. **DECIDES** that Victim 26/06 may resume the action initiated by Victim 05/06 before the Specialist Chambers;
- d. **DECIDES** that Victims 20/06, 22/06, 26/06 (also on behalf of Victim 05/06), 33/06, 34/06, 36/06, 37/06, 38/06, 39/06, 40/06 and 41/06 shall be included in Group 1 for the purpose of common representation and shall be represented by Victims' Counsel for Group 1;
- e. **DECIDES** that Victims' Counsel shall:
  - i. have access to the entire case file, including all public and confidential filings, transcripts and evidentiary material and excluding any *ex parte* items of the case file;

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<sup>89</sup> First Decision on Victims' Participation, para. 48.

- ii. be notified of all distributed items in the case file, including all public and confidential filings, transcripts, disclosures of evidentiary material and excluding any distributed *ex parte* items of the case file;
  - iii. not have access to nor be notified of strictly confidential material, including filings, transcripts or evidentiary material, unless specifically provided so;
  - iv. keep the victims participating in the proceedings informed of relevant developments in the case in a manner which does not reveal non-public information;
  - v. be present at all pre-trial hearings, excluding any *ex parte* hearings; and
  - vi. be permitted to make oral and written submissions whenever the personal interests of the victims participating in the proceedings are affected, without requiring prior leave;
- f. **ORDERS** that the protective measure of anonymity under Rule 80(4)(e)(i) of the Rules be granted to Victims 05/06, 20/06, 22/06, 26/06, 33/06, 34/06, 36/06, 37/06, 38/06, 39/06, 40/06 and 41/06;
- g. **ORDERS** that the name and any identifying information of Victim 12/06 be withheld from the Parties and the public;
- h. **DECIDES** to maintain the classification strictly confidential and *ex parte* of all application forms, summaries and supporting documentation;
- i. **ORDERS** the reclassification to public of filing F00318, currently classified as confidential; and

- j. **REJECTS** the request for reconsideration made by Counsel for Denied Applicants.



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**Judge Nicolas Guillou**

**Pre-Trial Judge**

Dated this Friday, 10 December 2021

At The Hague, the Netherlands.